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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 -----x  
4 UNITED STATES OF AMERICA,

5 v.

05 CR 1192 (NRB)

6 ROBERT TROSTEN,

7 Defendant.  
8 -----x

9 New York, N.Y.  
10 February 20, 2008  
11 5:30 p.m.

12 Before:

13 HON. NAOMI REICE BUCHWALD

14 District Judge

15 APPEARANCES

16 MICHAEL J. GARCIA

17 Acting United States Attorney for the  
18 Southern District of New York

19 BY: CHRISTOPHER GARCIA

20 NEIL BAROFSKY

21 Assistant United States Attorneys

22 MORVILLO, ABRAMOWITZ, GRAND, IASON,  
23 ANELLO & BOHRER, P.C.

24 Attorneys for Defendant

25 BY: ROBERT G. MORVILLO

CHRISTOPHER J. MORVILLO

RACHEL M. KORENBLAT

Also Present: Robert W. Manchak, Criminal Investigator  
Rua M. Kelly, Assistant United States Attorney  
Mary Beth Allen, Paralegal  
United States Attorney's Office

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1 (In open court)

2 THE CLERK: The case is United States v. Robert  
3 Trosten, Docket No. 05 Crim. 1192. Is the government ready to  
4 proceed?

5 MR. GARCIA: Yes. Good afternoon, your Honor.  
6 Christopher Garcia on behalf of the government. With me at  
7 counsel table is Assistant United States Attorney Neil  
8 Barofsky. And with the Court's permission, also at counsel  
9 table: Robert Manchak, criminal investigator with our office;  
10 Mary Beth Allen, paralegal with our office; and also Rua Kelly,  
11 also an Assistant United States Attorney with our office.

12 THE CLERK: And is the defense attorney ready to  
13 proceed?

14 MR. R. MORVILLO: We are, your Honor. Mr. Trosten is  
15 here. For the record, my name is Robert Morvillo. I represent  
16 Mr. Trosten. And seated to my left is Christopher Morvillo, my  
17 co-counsel.

18 THE DEFENDANT: Good afternoon.

19 THE COURT: Good afternoon, Mr. Morvillo.

20 MR. R. MORVILLO: I think it's my application, your  
21 Honor. We would apply to the Court for permission to withdraw  
22 our previously entered plea of not guilty as to Counts One,  
23 Two, Seven, Fifteen, and Seventeen of the indictment and enter  
24 a plea of guilty.

25 THE COURT: Mr. Trosten, if you will remain standing

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1 for a moment, would you raise your right hand, please.

2 Do you solemnly swear that the answers to the  
3 questions I am about to ask you will be the truth, the whole  
4 truth, and nothing but the truth, so help you God?

5 THE DEFENDANT: I do, your Honor.

6 THE COURT: Would you state your full name for me,  
7 please.

8 THE DEFENDANT: Robert Charles Trosten, Sr.

9 THE COURT: And, Mr. Trosten, how old are you?

10 THE DEFENDANT: 38.

11 THE COURT: Why don't you sit down.

12 THE DEFENDANT: Thank you.

13 THE COURT: Mr. Trosten, what was the last grade or  
14 level of school that you completed?

15 THE DEFENDANT: I finished undergraduate college with  
16 a B.S. in accounting.

17 THE COURT: At this time are you under the care of a  
18 doctor or psychiatrist?

19 THE DEFENDANT: Yes, I am.

20 THE COURT: Which?

21 THE DEFENDANT: A doctor -- a psychiatrist.

22 THE COURT: And what condition is he treating you for?

23 THE DEFENDANT: Dr. Neiman is treating me for sleep  
24 and anxiety on occasion.

25 THE COURT: And are you taking any medicine as a

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1 result of or in connection with that treatment?

2 THE DEFENDANT: I take sleep medicine as needed and  
3 anxiety medicine as needed.

4 THE COURT: At the moment, are you under the influence  
5 of any drug or alcohol?

6 THE DEFENDANT: No, I'm not.

7 THE COURT: Have you in fact ever been hospitalized or  
8 treated for either alcoholism or narcotics addiction?

9 THE DEFENDANT: No, I have not.

10 THE COURT: And how are you feeling physically today?

11 THE DEFENDANT: I feel great.

12 THE COURT: Have you had sufficient time to discuss  
13 the charges against you and your proposed plea with your  
14 counsel, the Messrs. Morvillo?

15 THE DEFENDANT: I have, yes.

16 THE COURT: And have you been satisfied with the  
17 advice and counsel that they have given to you?

18 THE DEFENDANT: I am.

19 THE COURT: And at this time, are you ready to change  
20 your plea?

21 THE DEFENDANT: I am indeed.

22 THE COURT: And what is your plea at the moment?  
23 Guilty or not guilty?

24 THE DEFENDANT: Guilty.

25 THE COURT: All right. Mr. Trosten, in order to

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1 determine whether your plea is voluntary and made with a full  
2 understanding of the charges against you and the consequences  
3 of your plea, I will make certain statements to you and I will  
4 ask you certain questions. I want you to understand that I  
5 need not accept your plea unless I am satisfied that you are in  
6 fact guilty and that you fully understand your rights.

7 Now, Count One of the indictment charges you with a  
8 conspiracy to commit securities fraud, wire fraud, bank fraud,  
9 and money laundering, and to make false filings with the SEC  
10 and material misstatements to auditors. This crime carries a  
11 maximum statutory penalty of five years in prison, a maximum  
12 fine of the greatest of \$250,000 or twice the gross pecuniary  
13 gain derived from the offense or twice the gross pecuniary loss  
14 to a person other than yourself as a result of the offense, a  
15 \$100 special assessment, and a mandatory term of supervised  
16 release of three years. Do you understand that those are the  
17 charges in Count One and the maximum statutory penalties  
18 provided for that charge?

19 THE DEFENDANT: I do.

20 THE COURT: Count Two charges you with securities  
21 fraud. And this crime carries a maximum possible sentence of  
22 20 years in prison, a maximum fine of the greatest of \$5  
23 million or twice the gross pecuniary loss derived from the  
24 offense, or twice the gross pecuniary loss -- I'm sorry. I  
25 think I said twice pecuniary loss. It's twice the gross

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1 pecuniary gain derived from the offense or twice the gross  
2 pecuniary loss to a person other than yourself as a result of  
3 the offense, a \$100 special assessment, and a maximum term of  
4 supervised release of three years. Do you understand that  
5 those are the charges in Count Two and the maximum possible  
6 penalties provided by law?

7 THE DEFENDANT: I do.

8 THE COURT: Count Seven charges you with wire fraud,  
9 and this crime carries a maximum possible sentence of 20 years  
10 in prison, a maximum fine of the greatest of \$250,000 or twice  
11 the gross pecuniary gain derived from the offense or twice the  
12 gross pecuniary loss to a person other than yourself as a  
13 result of the offense, a \$100 special assessment, and a maximum  
14 term of supervised release of three years. Do you understand  
15 that those are the charges in Count Seven and the maximum  
16 statutory penalty provided for the crime of wire fraud?

17 THE DEFENDANT: I do, your Honor.

18 THE COURT: Count Fifteen charges you with bank fraud.  
19 And this crime carries a maximum possible sentence of 30 years  
20 in prison, a maximum fine of the greatest of \$250,000 or twice  
21 the gross pecuniary gain derived from the offense or twice the  
22 gross pecuniary loss to a person other than yourself as a  
23 result of the offense, a \$100 special assessment, and a  
24 mandatory -- or a maximum term of supervised release of five  
25 years. Do you understand that those are the charges in Count

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1 Fifteen and the maximum statutory penalty provided therefor?

2 THE DEFENDANT: I do, your Honor.

3 THE COURT: Count Seventeen charges you with money  
4 laundering, and this crime carries a maximum sentence of ten  
5 years in prison, a maximum fine of the greatest of \$250,000 or  
6 twice the gross pecuniary gain derived from the offense or  
7 twice the gross pecuniary loss to a person other than yourself  
8 as a result of the offense, a \$100 mandatory special  
9 assessment, and a maximum supervised release term of three  
10 years. Do you understand that that is the charge in Count  
11 Seventeen and the maximum penalty provided for it by statute?

12 THE DEFENDANT: I do, your Honor.

13 THE COURT: And do you understand that, in addition to  
14 the punishments which I just described, that the Court must  
15 order restitution with respect to the charges in the  
16 indictment?

17 THE DEFENDANT: I'm sorry, your Honor?

18 THE COURT: I said, do you understand that in addition  
19 to the punishments that I've just described, that the Court  
20 must order restitution --

21 THE DEFENDANT: I do.

22 THE COURT: -- with respect to the charges to which  
23 you are pleading?

24 THE DEFENDANT: I do.

25 THE COURT: Do you understand that as part of your

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1 plea agreement, that you have admitted the forfeiture  
2 allegations in the indictment and that you agree to forfeit to  
3 the United States the sum of \$2,400,000,000, as well as all the  
4 specific property listed in schedule A to your plea agreement?

5 THE DEFENDANT: I do, your Honor.

6 THE COURT: And that as part of this plea agreement,  
7 that you have agreed to not file any claims for any of the  
8 forfeited property, and also to take such steps as necessary to  
9 clear title to the specific property?

10 THE DEFENDANT: I do, your Honor.

11 THE COURT: And do you understand that you have the  
12 right to plead not guilty and the right to a trial on the  
13 charges against you and in fact the right to a jury trial?

14 THE DEFENDANT: I do.

15 THE COURT: At this time, Mr. Garcia, I would ask you,  
16 please, to recite the elements of the crimes to which  
17 Mr. Trosten is pleading.

18 MR. GARCIA: Yes, your Honor. With respect to Count  
19 One, there are three elements: first, that there existed an  
20 agreement or understanding to commit the objects charged;  
21 second, that Mr. Trosten knowingly became a member of that  
22 agreement or understanding; and, third, that one of the  
23 co-conspirators knowingly committed at least one overt act in  
24 furtherance of the conspiracy during the life of the  
25 conspiracy.

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1           With respect to Count Two, the securities fraud count,  
2           the first element is that Mr. Trosten, in connection with the  
3           purchase or sale of securities, here the notes described in  
4           Count Two, did one or more of the following: employed a device,  
5           scheme, or artifice to defraud; or made an untrue statement of  
6           material fact; or omitted to state a material fact which made  
7           what was said, under the circumstances, misleading; or engaged  
8           in an act, practice, or course of business that operated or  
9           would operate as a fraud or deceit upon a purchaser or seller.  
10          Second, that Mr. Trosten acted knowingly, willfully, and with  
11          intent to defraud. And, third, that Mr. Trosten used or caused  
12          to be used any means or instruments of transportation or  
13          communication in interstate commerce, or the use of the mails,  
14          in furtherance of the fraudulent conduct.

15               With respect to Count Seven, the wire fraud count,  
16               there are five elements: first, that a scheme to defraud  
17               existed; second, that Mr. Trosten must have participated in the  
18               scheme with intent to defraud; third, that misrepresentations  
19               or omissions must have related to material facts; fourth, that  
20               the scheme was executed to obtain money or property; and  
21               finally, that in executing the scheme, Mr. Trosten used or  
22               caused to be used interstate wires, or the use of such wires  
23               were reasonably foreseeable to him, as listed in the  
24               indictment. And here, your Honor, with respect to Count Seven,  
25               it is alleged that on June 22, 2004, Mr. Trosten sent an

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1 e-mail.

2 With respect to Count Fifteen, the bank fraud charge,  
3 your Honor, there are three elements: first, that there was a  
4 scheme to defraud a bank by means of materially false or  
5 fraudulent pretenses, representations, or promises; second,  
6 that Mr. Trosten executed or attempted to execute the scheme  
7 with intent to defraud the bank; and, third, that at the time  
8 of the execution of the scheme, the bank had its deposits  
9 insured by the Federal Deposit Insurance Corporation.

10 At this time, your Honor, the government would proffer  
11 and represent that HSBC, which is identified in the indictment,  
12 has its deposits, and had its deposits at the relevant period,  
13 insured by the Federal Deposit Insurance Corporation.

14 Finally, your Honor, with respect to Count Seventeen,  
15 the money laundering count, there are three elements: first,  
16 that Mr. Trosten engaged or attempted to engage in monetary  
17 transactions involving criminally derived property of a value  
18 greater than \$10,000; second, that the property involved in the  
19 monetary transaction, or attempted transaction, was in fact  
20 derived from specified unlawful activity; finally, that  
21 Mr. Trosten acted knowingly. And with respect to this count,  
22 the specified unlawful activities are the wire fraud, bank  
23 fraud, and securities fraud otherwise charged.

24 THE COURT: Mr. Trosten, do you understand that if you  
25 pled not guilty and went to trial, that the burden would be on

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1 the government to prove each and every element of the crimes  
2 charged beyond a reasonable doubt in order to convict you?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: Do you understand that at a trial, you  
5 would have the right to be represented by an attorney at all  
6 stages of the proceeding and if necessary an attorney would be  
7 appointed for you?

8 THE DEFENDANT: I do, your Honor.

9 THE COURT: Do you understand that at a trial you  
10 would have the right to confront and cross-examine witnesses  
11 against you and the right not to be compelled to incriminate  
12 yourself?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: And do you understand that at a trial you  
15 would be presumed innocent until such time, if ever, the  
16 government established your guilt by competent evidence to the  
17 satisfaction of the trier of fact beyond a reasonable doubt?

18 THE DEFENDANT: I do, your Honor.

19 THE COURT: And do you understand that at a trial, you  
20 would have the right to testify and would also be entitled to  
21 compulsory process, in other words, the right to call other  
22 witnesses on your behalf?

23 THE DEFENDANT: I do, your Honor.

24 THE COURT: And do you understand that if your plea is  
25 accepted, that there will be no further trial of any kind, so

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1 that by pleading guilty, you are waiving your right to a trial?

2 THE DEFENDANT: I do.

3 THE COURT: Do you understand that if you are  
4 sentenced to a period of supervised release and if you violate  
5 the terms of your supervised release, that an additional period  
6 of jail time may be imposed without credit for the time that  
7 you had previously spent on supervised release?

8 THE DEFENDANT: I do.

9 THE COURT: And do you understand that in connection  
10 with your plea of guilty, that the Court may ask you certain  
11 questions about the offense to which you have pled, and if you  
12 answer those questions under oath and on the record and in the  
13 presence of your lawyer, that your answers if false may later  
14 be used against you in a prosecution for perjury or false  
15 statement?

16 THE DEFENDANT: I do, your Honor.

17 THE COURT: And do you understand that, in determining  
18 your sentence, that the Court is obligated to calculate the  
19 applicable sentencing guidelines range and to consider that  
20 range and possible departures under the guidelines, as well as  
21 other factors concerning the nature and circumstance of the  
22 offense and the history and characteristics of the defendant?

23 THE DEFENDANT: I do, your Honor.

24 THE COURT: Mr. Trosten, did you sign a plea agreement  
25 earlier today?

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1 THE DEFENDANT: I did, your Honor.

2 THE COURT: And before you signed it, did you discuss  
3 it with your lawyers?

4 THE DEFENDANT: I did.

5 THE COURT: And before you signed it, did you read it?

6 THE DEFENDANT: I did, your Honor.

7 THE COURT: Let's just put the plea agreement to one  
8 side for a moment. Apart from the plea agreement, have any  
9 threats or promises been made to you to make you plead guilty?

10 THE DEFENDANT: No, your Honor.

11 THE COURT: Again, apart from the plea agreement, have  
12 any understandings or promises been made to you concerning the  
13 sentence that you will receive?

14 THE DEFENDANT: No, your Honor.

15 THE COURT: Is your plea voluntary?

16 THE DEFENDANT: Yes, it is.

17 THE COURT: I would like to review a few portions of  
18 the plea agreement with you. Do you understand that pursuant  
19 to this plea agreement, that you have undertaken to truthfully  
20 and completely disclose all information about yourself and  
21 others as required of you by the U.S. Attorney's Office; and  
22 that you have agreed to fully cooperate with the U.S.  
23 Attorney's Office, the United States Postal Inspection Service,  
24 the Securities and Exchange Commission, and any other law  
25 enforcement agency designated by the Office; that you have

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1 agreed to attend all meetings as your presence is requested,  
2 and to provide to the U.S. Attorney's Office any document or  
3 other tangible evidence relating to any inquiry from the U.S.  
4 Attorney's Office or other law enforcement agencies; that you  
5 have agreed to truthfully testify before the grand jury and at  
6 any other trial or court proceeding; that you have agreed to  
7 fully disclose to the U.S. Attorney's Office any crimes that  
8 you have committed and any civil or criminal proceedings in  
9 which you have been or are a subject target or a witness; and  
10 that you have further agreed to commit no further crimes  
11 whatsoever?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: And do you understand that the U.S.  
14 Attorney's Office has no authority to agree not to prosecute  
15 you for any possible criminal tax violations?

16 THE DEFENDANT: I do, your Honor.

17 THE COURT: And do you understand that if you fully  
18 comply with this agreement, that you will not be further  
19 prosecuted by the U.S. Attorney's Office for any crime related  
20 to your participation in the crimes described in the  
21 indictment, Counts One, Two, Seven, Fifteen, and Seventeen,  
22 except for a possible criminal tax violation?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: And are you aware that this agreement  
25 doesn't bind any other federal, state, or local prosecuting

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1 office?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: And do you understand further that the  
4 sentence that you will receive is within the sole discretion of  
5 the Court?

6 THE DEFENDANT: Yes, your Honor, I do.

7 THE COURT: And do you understand that if the United  
8 States Attorney's Office determines that you have provided  
9 substantial assistance in an investigation or prosecution and  
10 fully complied with the understandings specified in this plea  
11 agreement, that the U.S. Attorney's Office will file a motion  
12 pursuant to Section 5K1.1 of the guidelines, requesting that  
13 you be sentenced in accordance with the factors set forth in  
14 that section?

15 THE DEFENDANT: I do, your Honor.

16 THE COURT: And do you understand that even if the  
17 U.S. Attorney makes such a motion, that the issue of sentencing  
18 remains within the discretion of the Court?

19 THE DEFENDANT: I do.

20 THE COURT: And do you understand that if the U.S.  
21 Attorney's Office determines that you have not provided  
22 substantial assistance, that they are released of any  
23 obligation to file a 5K1.1 letter?

24 THE DEFENDANT: I do, your Honor.

25 THE COURT: And do you understand that, should you

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1 commit any further crimes or should it be determined that you  
2 have given false, incomplete, or misleading testimony or  
3 information, that you are thereafter subject to prosecution for  
4 additional federal crimes?

5 THE DEFENDANT: I do, your Honor.

6 THE COURT: Do you understand that if it is determined  
7 that you have committed further crimes or given false or  
8 misleading testimony or otherwise violated this agreement, that  
9 all statements made by you to the United States Attorney's  
10 Office can be used against you in a subsequent prosecution?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: And are you entering this plea because you  
13 are in fact guilty?

14 THE DEFENDANT: I am, your Honor.

15 THE COURT: And do you understand that as part of this  
16 plea agreement, that you are waiving any right you might have  
17 to have the government preserve any physical evidence for  
18 future DNA testing or any right you might have for DNA testing  
19 at the present time?

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: And do you understand that this agreement  
22 takes the place of any prior understanding that you may have  
23 reached with the United States Attorney's Office and that there  
24 are no conditions beyond those set forth in this written  
25 agreement and that there cannot be any additional

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1 understandings that are not entered into in writing and signed?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: Mr. Trosten, did you commit the offenses  
4 that you are pleading guilty to?

5 THE DEFENDANT: I did, your Honor.

6 THE COURT: Would you tell me, please, what you did.

7 THE DEFENDANT: Your Honor, first, I just would like  
8 to state for the record that, when I said I felt great, it was  
9 relating to medicines that I had taken, as opposed to feeling  
10 ill because of those medicines, not because of my conduct,  
11 which I deeply regret, your Honor.

12 THE COURT: I would just like -- are you under the  
13 influence of any medicine today?

14 THE DEFENDANT: I am not, no. No.

15 THE COURT: OK. And you have not had any trouble  
16 following any of the questions I have asked you?

17 THE DEFENDANT: No, I have not. No, I have not.

18 Your Honor, while I was employed at Refco, I agreed  
19 with other Refco executives to hide the true nature of Refco's  
20 finances on Refco's financial statements. I knew that Refco's  
21 financial statements did not accurately reflect Refco's  
22 financial condition, because the financial statements did not  
23 disclose the full amount that Refco Group Holdings, Inc., a  
24 related party, owed to Refco. I understood that the RGHI  
25 receivable was underreported because Philip Bennett, Refco's

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1 former chief executive officer, and other Refco executives,  
2 including me, were involved in a series of transactions at the  
3 end of Refco's financial reporting periods to make it appear as  
4 if a receivable was due from third-party customers rather than  
5 from a related party.

6 The RGHI receivable was composed of, amongst other  
7 things, historic customer losses, bad debts, and expenses that  
8 RGHI incurred on behalf of Refco.

9 In addition, I participated in a number of  
10 transactions that padded or inflated Refco's income. For  
11 example, I participated in transactions that shifted expenses  
12 off the books of Refco and onto the books of Refco Group  
13 Holdings, Inc.

14 I, along with other Refco executives, agreed to  
15 conceal the true size and nature of the RGHI receivable from,  
16 amongst others, Refco's auditors, Thomas H. Lee Partners; HSBC,  
17 which, in 2004, participated in Refco's senior secured credit  
18 facility, as referenced in paragraph 14 -- I'm sorry --  
19 paragraph 41 and Count Fifteen of the indictment; and investors  
20 who purchased bonds that Refco issued in 2004, as referenced in  
21 Count Two of the indictment.

22 I left the company in August of 2004, one year before  
23 the IPO of Refco. I and other Refco executives used the  
24 interstate wires to accomplish these acts within this district,  
25 as referenced in Count Seven of the indictment.

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1           Furthermore, I received funds obtained from the  
2           transaction with Thomas H. Lee Partners, referenced in  
3           paragraph 34 of the indictment, which I knew were proceeds from  
4           unlawful activity, as referenced in Count Seventeen.

5           The RGHI receivable and the transactions used to  
6           conceal it were material information that Refco investors and  
7           lenders would have wanted to know before investing in or  
8           lending money to Refco.

9           I knew that obtaining funds from Refco investors and  
10          lenders based on misleading financial information was wrong.

11          Excuse me.

12          Your Honor, I take full responsibility for my actions  
13          and my conduct.

14          I wish to apologize to my family and those that I  
15          harmed by my conduct, which I deeply and sincerely regret, your  
16          Honor.

17          Thank you.

18          THE COURT: Mr. Garcia, is there anything else that  
19          you wish me to ask Mr. Trosten?

20          MR. GARCIA: No, your Honor.

21          THE COURT: Mr. Trosten, do you still wish to plead  
22          guilty?

23          THE DEFENDANT: I do, your Honor.

24          THE COURT: Mr. Morvillo, do you know of any reason  
25          that Mr. Trosten ought not to plead guilty?

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1 MR. R. MORVILLO: I do not, your Honor.

2 THE COURT: All right. Mr. Trosten, I am satisfied  
3 that you understand the nature of the charge against you and  
4 the consequences of your plea, and that your plea is made  
5 voluntarily and knowingly, and that there is a factual basis  
6 for your plea. I will therefore accept your plea of guilty.

7 Mr. Garcia, do you want to give me a control date?

8 MR. GARCIA: Your Honor, respectfully, the government  
9 would request about a year for a control date.

10 THE COURT: Let's just see if -- OK. Well, February  
11 20, 2009 is a Friday. So you can write to me then.

12 All right. Is there anything else at this time?

13 MR. GARCIA: Nothing more, your Honor, from the  
14 government.

15 THE COURT: Mr. Morvillo?

16 MR. R. MORVILLO: Nothing, your Honor. Thank you for  
17 accommodating my schedule by sitting as late as you are.

18 THE COURT: We're always here at this time.

19 MR. GARCIA: Thank you, Judge.

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